

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**R.B., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Baltimore, MD, Employer**

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**Docket No. 14-1911  
Issued: February 3, 2015**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On August 29, 2014 appellant filed a timely appeal of a June 16, 2014 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed from the issuance of the most recent merit decision of December 11, 2013, to the filing of this appeal and pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of this case.<sup>2</sup>

**ISSUE**

The issue is whether OWCP properly refused to reopen appellant's case for further reconsideration of the merits pursuant to 5 U.S.C. § 8128(a).

On appeal, appellant submitted an updated magnetic resonance imaging (MRI) scan of the lumbar spine.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the issuance of the June 16, 2014 OWCP decision, appellant submitted new evidence. The Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c)(1).

## **FACTUAL HISTORY**

On September 5, 2013 appellant, then a 50-year-old distribution window clerk, filed an occupational disease claim (Form CA-2) alleging aggravation of preexisting neck and back conditions due to factors of her federal employment, including constant lifting.

In reports dated January 31 through April 11, 2013 Dr. Mohammad Rana, a Board-certified neurologist, diagnosed moderate multilevel degenerative disc disease of the neck and spine and indicated that appellant's pain symptoms got worse at work while lifting and pushing.

On October 19, 2012 Dr. Manish Rai, a Board-certified internist, diagnosed low back pain without radiculopathy and lumbosacral disc degeneration.

In an October 10, 2013 letter, OWCP notified appellant of the deficiencies of her claim and afforded her 30 days to submit additional evidence and respond to its inquiries.

Appellant submitted a January 30, 2011 MRI scan of the cervical spine which revealed moderate multilevel degenerative disc change.

In a November 10, 2011 report, Dr. Brian Block, a Board-certified anesthesiologist and pain medicine specialist, diagnosed low back pain, leg pain, and neck pain. He opined that appellant's cervical pain was "likely from her degenerated discs" and her back pain "could also be from degenerated or herniated discs." Dr. Block further indicated that her adhesive capsulitis was "likely because she ha[d] not moved her arm enough due to the neck pain."

On October 30, 2013 Dr. Rana indicated that appellant had been under his care since 2009 and had chronic neck, shoulder, and arm pain since December 22, 2010. He reiterated that appellant had been diagnosed with cervical spine degenerative disc disease on x-rays, later confirmed on MRI scans, and that her symptoms got worse over a period of time due to lifting, pulling, and pushing heavy boxes at work. He opined that these work-related exertions on her spine made her pain symptoms so bad that she had to miss work.

By decision dated December 11, 2013, OWCP denied the claim on the basis that appellant failed to submit sufficient evidence to establish that a diagnosed medical condition was causally related to factors of her federal employment.

On April 1, 2014 appellant requested reconsideration and submitted a disc containing multiple images from an MRI scan of the lumbar spine dated September 26, 2013 and a questionnaire completed by appellant prior to the study.

By decision dated June 16, 2014, OWCP denied appellant's request for reconsideration of the merits finding that she did not submit pertinent new and relevant evidence and did not show that OWCP erroneously applied or interpreted a point of law not previously considered by OWCP.

On appeal appellant submitted an updated MRI scan of the lumbar spine and a completed medical questionnaire.

## LEGAL PRECEDENT

Section 8128(a) of FECA does not entitle a claimant to a review of an OWCP decision as a matter of right; it vests OWCP with discretionary authority to determine whether it will review an award for or against compensation.<sup>3</sup> OWCP, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).<sup>4</sup>

To require OWCP to reopen a case for merit review under section 8128(a) of FECA, OWCP regulations provide that the evidence or argument submitted by a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.<sup>5</sup> To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.<sup>6</sup> When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.<sup>7</sup>

The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record<sup>8</sup> and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>9</sup>

## ANALYSIS

In support of her April 1, 2014 reconsideration request, appellant submitted a disc containing multiple images from a September 26, 2013 MRI scan of the lumbar spine and a questionnaire completed by appellant prior to the study. The Board finds that submission of these documents did not require reopening appellant's case for merit review as they do not contain rationale by a physician relating a diagnosed medical condition to factors of her federal employment, which was the issue before OWCP.<sup>10</sup> Therefore, these documents do not constitute

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<sup>3</sup> 5 U.S.C. § 8101 *et seq.* Under section 8128 of FECA, the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. 5 U.S.C. § 8128(a).

<sup>4</sup> See *Annette Louise*, 54 ECAB 783, 789-90 (2003).

<sup>5</sup> 20 C.F.R. § 10.606(b)(3). See *A.L.*, Docket No. 08-1730 (issued March 16, 2009).

<sup>6</sup> *Id.* at § 10.607(a).

<sup>7</sup> *Id.* at § 10.608(b).

<sup>8</sup> See *A.L.*, *supra* note 5. See also *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

<sup>9</sup> *Id.* See also *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

<sup>10</sup> See 5 U.S.C. § 8101(2). Section 8101(2) of FECA provides as follows: “(2) ‘physician’ includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law.” See also *Paul Foster*, 56 ECAB 208, 212 n.12 (2004); *Joseph N. Fassi*, 42 ECAB 677 (1991); *Barbara J. Williams*, 40 ECAB 649 (1989).

relevant and pertinent new evidence and are not sufficient to require OWCP to reopen the claim for further consideration of the merits.

Appellant did not submit any evidence to show that OWCP erroneously applied or interpreted a specific point of law or advanced a relevant legal argument not previously considered by OWCP, nor did she submit any relevant and pertinent new evidence not previously considered. On appeal, appellant submitted an updated MRI scan of the lumbar spine. The Board, however, is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision.<sup>11</sup> Thus, the Board finds that appellant did not meet any of the necessary requirements and is not entitled to further merit review.<sup>12</sup>

### **CONCLUSION**

The Board finds that OWCP properly refused to reopen appellant's case for further reconsideration of the merits pursuant to 5 U.S.C. § 8128(a).

### **ORDER**

**IT IS HEREBY ORDERED THAT** the June 16, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 3, 2015  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>11</sup> See *supra* note 2.

<sup>12</sup> See *L.H.*, 59 ECAB 253 (2007).